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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEDERAL TRADE COMMISSION,	:	
	:	Civil No.
Plaintiff,	:	
vs.	:	
CHRISTOPHER ENTERPRISES, INC.,	:	Complaint for Permanent Injunction
a corporation, and	:	and Other Equitable Relief
NORMAN BACALLA and RUTH	:	
CHRISTOPHER BACALLA, individually	:	
and as officers of the corporation,	:	
Defendants	:	

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned attorneys, alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction and other equitable relief against Defendants for their deceptive acts or practices and false advertisements for foods, drugs, devices, services or cosmetics in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the FTC, is an independent agency of the United States government created by statute, 15 U.S.C. §§ 41-58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts and practices, and false advertisements for food, drugs, devices, cosmetics, or services, in or affecting commerce. The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act and to secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Christopher Enterprises, Inc. ("Christopher Enterprises") is a Utah corporation with its principal place of business at 1195 Spring Creek Place, Springville, UT

84663. Christopher Enterprises also does business under the name The Herb Shop Connection. Christopher Enterprises transacts or has transacted business in the District of Utah.

6. Defendant Norman Bacalla is president of Christopher Enterprises. Individually, or in concert with others, he directs, controls, formulates, or participates in the acts and practices of Christopher Enterprises, including the acts and practices complained of below. He resides and transacts or has transacted business in the District of Utah.

7. Defendant Ruth Christopher Bacalla is vice-president of Christopher Enterprises. Individually, or in concert with others, she directs, controls, formulates, or participates in the acts and practices of Christopher Enterprises, including the acts and practices complained of below. She resides and transacts or has transacted business in the District of Utah.

COMMERCE

8. At all times material to this complaint, Defendants' course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

9. Since at least 1998, and continuing thereafter, Defendants have marketed herbal products that purportedly treat and alleviate the symptoms of various diseases and health conditions.

10. Defendants market an herb commonly known as comfrey and products containing comfrey (referred to collectively herein as "comfrey products").

11. Defendants advertise, promote, offer for sale, sell, and distribute comfrey products to consumers throughout the United States via the Internet, by mail and telephone order, and through distributors, retail stores, and health care practitioners, among other means.

12. Defendants' advertisements and promotional materials about comfrey products sold for internal consumption, include, among others, the following statements:

a) Bone, Flesh, & Cartilage Formula

BF&C

Usage:

. . . This formula has done miraculous things with broken backs, legs, hips, etc. This formula has been used on curvature of the spine, polio, multiple sclerosis, and muscular dystrophy, stroke and arthritis of the bone. This formula is used externally as well as orally and has brought tremendously fast results. This formula is a "power house" and has been used on (and restored to health), cancer of the spine, arthritis, and polio, and has helped rebuild torn cartilage and sinews, fractures, etc. etc. . . .

Ingredients:

- ! oak bark
- ! comfrey leaves
- ! marshmallow root
- ! mullein herb
- ! walnut bark (or leaves)
- ! gravel root
- ! wormwood
- ! lobelia
- ! skullcap

[Exhibit A]

b) Calcium Formula

Calc Tea

Usages:

1. We need calcium for nerve sheath, vein and artery walls, bone, teeth, etc. This combination is all pure herbs. It is also used for cramps, "Charlie horses" and for all calcium needs in the body.
2. Children with crowded crooked teeth, and later the wisdom teeth are pulled because of not enough room, is caused by a narrow jaw from not having enough calcium in the body. The mother carrying the baby before birth should increase her natural calcium intake, now for two people, her and the baby, so it will be built with good wide jaw and tooth material. . . .

Dosages:

Broken Bone: After the doctor has set a bone, drink three or more cups of comfrey tea [BF&C] each day—the more the better. With each cup of tea take the calcium [Calc Tea] combination. For children old enough to take capsules, use two #00 capsules or more, three times in a day. As suggested, take these capsules with the comfrey tea. . . .

Ingredients: Calc-Tea is made of horsetail grass, oat straw, comfrey leaves and lobelia. . . .

Testimonials:

1. Tooth Grows Back: My oldest daughter . . . had a dental cavity. . . . Two years later, the filling came out and a hole was left in her tooth. Nothing more was done about it except the herbal calcium formula [Calc Tea] that you recommend . . . We have recently discovered that the hole where the filling was is now completely grown over and is absolutely unnoticeable even under complete inspection. [NL 1-9]

2. Insomnia cured: I have found great relief by taking Dr. Christopher's calcium formula and thyroid formula through the night . . . I have recommended this treatment to others and to my mother and they all have found it helps their insomnia also.-A.R., Williston, ND [D. Christopher]

Useful in treating Arthritis, Breast, Broken Bones, Headache, Nerves, Nosebleed, Osteoporosis, Paralysis, Pregnancy, Rheumatism, Teeth, Varicose Veins
[Exhibit B]

c) Asthma Formula**Comfrey-Mullein-Garlic**

Usages: An excellent asthma syrup. Can be used for sore throats and mucus. Excellent for fighting toxins. . . .

Ingredients:

- ! comfrey
- ! mullein extracts
- ! garlic syrup
- ! vegetable glycerine

Testimonials:

Cough and cold helped: When my little girl Hanann came down with a cough and cold we struggled to get her to take some herbal remedies but she refused because of their taste. Then we tried the Comfrey-Mullein-Garlic syrup and hit a home run. The runny nose, lung congestion, and sore throat quickly diminished and she was up and going in no time. Her cousin of the same age who lives next door came down with the same thing and required 2 additional weeks to get over it (they don't use herbs). Hanann now has her own bottle of Comfrey-Mullein-Garlic syrup and she goes to the fridge to take it when she needs it. -L.M., Mapleton, UT [D. Christopher]

[Exhibit C]

d) Lungs & Respiratory Tract Formula

Resp-Free

. . . . This is an aid in emphysema as well as other bronchial and lung congestions such as bronchitis, asthma, tuberculosis, etc. . . .

Ingredients:

- ! comfrey leaves
- ! mullein
- ! chickweed
- ! marshmallow root
- ! lobelia

Testimonials:

I contracted T.B. at age 15 and now 30 years later, calcification has collapsed my left lung. I take dilation medication and need oxygen to sleep at night. I started Dr. Christopher's Lung Formula [Resp-Free] and it immediately started helping. It makes it so much easier to get out the mucus. P.S. It is also helping my brother-in-law who has emphysema. -O.R., San Antonio, TX [D. Christopher]
[Exhibit D]

e) First Aid Formula

X-Ceptic

Usages: This tincture is good for infection, both externally or internally. [HHH p.196]

An excellent formula for pyorrhea is X-ceptic. [EWH p.140]

For wounds with the chance of infection, apply X-ceptic. [EWH p.159]

The herbal antiseptic tincture [X-Ceptic] is a certain cure for sore throat pain, but only very brave souls can tolerate the taste. [NL 4-5]

A toothache can be devastating. We have used ... a few drops of the herbal antiseptic tincture [X-Ceptic]. Of all the temporary treatments, the herbal antiseptic tincture works best...We have had cases where the toothache was dispelled after one application. [NL 4-5]

Dosages: Thrush: If your baby has thrush, which you can determine from white spots on the sides of the mouth, a white tongue, or soreness during nursing, you can try several remedies. Dip a Q-tip in X-ceptic (an herbal extract) and swab the area several times per day, then give raspberry tea in a bottle. [EWH p.94]

Ingredients:

- ! oak bark
- ! golden seal root
- ! garlic
- ! comfrey
- ! myrrh
- ! capsicum

[Exhibit E]

f) Herbal Bolus

V.B.

. . . . Boluses are made with healing herbs that (1) draw out the toxins and poisons, (2) aid (with herbal foods) in making the malfunctioning area healthy, so that cysts, tumors, and cancerous conditions will not have waste material to survive on or live in, because they are all scavengers. . . (3) The bolus spreads its herbal influences widely from the vagina or bowel through the entire urinary and genital organs. [HHH p. 191]

Ingredients:

- ! squaw vine herbs
- ! slippery elm bark
- ! yellow dock root
- ! comfrey root
- ! marshmallow root
- ! chickweed herb
- ! golden seal root
- ! mullein leaves

Testimonials:

. . . . Five women, each suffering from cervical cancer, diagnosed by doctors, came to Claire asking for help. Using nutrition and the V.B. therapy, four of the cases were completely cleared and one was in remission. [EWH p.16]

[Exhibit F]

g) Prolapse Formula

Yellow Dock Combination

Usages:

1. As an aid in prolapsed uterus, bowel, or other organs, to assist in giving relief. [HHH p. 192]
2. Pregnancy: If there is yeast infection and or Herpes Simplex before or during pregnancy, add . . . the vaginal-rectal bolus combination [V.B.] and the slant board routine [Yellow Dock Combination] included herein. These are very beneficial and yet are harmless to the mother and child-to-be. [HHH p. 7]

Ingredients:

- ! white oak bark
- ! comfrey leaves
- ! yellow dock root
- ! mullein herb
- ! walnut leaves
- ! marshmallow root
- ! lobelia

[Exhibit G]

h) Dr. John R. Christopher's Family Originals are convenient, safe and effective.
[Exhibit H]

13. Defendants sell bulk comfrey root and leaves for prices ranging from \$12.95 to \$14.95 per pound. Defendants sell BF&C Formula to consumers for \$9.95 (100 capsules); Calc-Tea for \$10.95 (100 capsules); Comfrey-Mullein-Garlic for \$12.95 (4 oz.); Resp-Free for \$10.95 (2 oz.); X-Ceptic for \$15.95 (1 oz.); VB Herbal Bolus for \$16.95 (4 oz.); and Yellow Dock Combination for \$9.95 (4 oz.).

14. Consumers pay Defendants for their purchases of comfrey products by check, money order, or credit card.

DEFENDANTS' VIOLATIONS OF SECTIONS 5(a) AND 12 OF THE FTC ACT

15. As set forth below, Defendants have violated Sections 5(a) and 12 of the FTC Act, 15 U.S.C. § § 45(a) and 52, in connection with the offer, sale, advertising, promotion or distribution of comfrey products.

16. The comfrey products offered and sold for internal and external use by Defendants are either "foods" or "drugs" for purposes of Sections 12 and 15 of the FTC Act, 15 U.S.C. §§ 52 and 55.

Safety Representations

17. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12, above, Defendants have represented, expressly or by implication, that their comfrey products are safe for consumers, including pregnant women, infants, and children, when taken internally, as oral preparations, as suppositories, and applied to open wounds.

18. In truth and fact, comfrey and products containing comfrey are not safe for consumers, including pregnant women, infants, and children, when taken internally, as oral preparations, as suppositories, or applied to open wounds. Comfrey contains pyrrolizidine alkaloids which have been linked to serious illness, occasionally leading to death. Internal consumption of comfrey can cause serious liver damage. Therefore, the making of the representation set forth in Paragraph 17 was, and is, a deceptive practice and constitutes false advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

19. Defendants did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 17, at the time the representation was made. Therefore, the making of the representation set forth in Paragraph 17 is a deceptive practice and constitutes false advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Efficacy Representations

20. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(a) above, Defendants have represented, expressly or by implication, that BF&C Formula, taken internally, is effective in the treatment and/or cure of broken bones, curvature of the spine, polio, multiple sclerosis, muscular dystrophy, stroke, spinal cancer, and arthritis.

21. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(b) above, Defendants have represented, expressly or by implication, that Calc Tea, taken internally, is effective in supplying all calcium needs, including all calcium needs of a developing fetus, in restoring teeth, and in the prevention,

treatment, and/or cure of broken bones, cramps, “charlie horses,” arthritis, headache, osteoporosis, paralysis, rheumatism, varicose veins, and insomnia.

22. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(c) above, Defendants have represented, expressly or by implication, that Comfrey-Mullein-Garlic, taken internally, is effective in the treatment and/or cure of asthma, colds, coughs, lung congestion, and sore throats.

23. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(d) above, Defendants have represented, expressly or by implication, that Resp-Free, taken internally, is effective in the treatment of emphysema, bronchitis, asthma, and tuberculosis.

24. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(e) above, Defendants have represented, expressly or by implication, that X-Ceptic, taken internally or applied to an open wound, is effective in the prevention, treatment and/or cure of infection, pyorrhea, sore throat pain, toothache, and thrush.

25. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(f) above, Defendants have represented, expressly or by implication, that V.B., used as a suppository, is effective in the treatment and/or cure of cancer.

26. Through their advertising and promotional materials, including but not limited to the representations set forth in Paragraph 12(g) above, Defendants have represented, expressly or by implication, that Yellow Dock Combination, used as a suppository, is effective in the treatment of prolapsed bowel and uterus, yeast infection, and herpes simplex.

27. Defendants did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraphs 20 through 26, at the time the representations were made. Therefore, the making of the representations set forth in Paragraphs 20 through 26 is a deceptive practice and constitutes false advertising for a food or drug, in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

28. As a result of Defendants' unlawful acts or practices, consumers throughout the United States have suffered and continue to suffer monetary loss and possible injuries to their health. Defendants also have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

29. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to grant injunctive and other equitable relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

PRAYER FOR RELIEF

WHEREFORE plaintiff Federal Trade Commission pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that this Court:

1. Permanently enjoin Defendants from violating the FTC Act as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act including the refund of monies paid and the disgorgement of ill-gotten monies; and

3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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Dated: _____